



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

In *Wales vs. Ford*, 3 Halsted, 267, trespass was brought against the owner of a stud horse, for injury done by biting and kicking plaintiff's man and horse. At the time of the injury, the horse was in the possession of a third person, who had him in the vicinity in service. *Per Cur.* The action is misconceived, "if any action can be sustained at all, it must be in form of trespass on the case." So we think here, and that the learned judge of the common pleas erred in ruling that the action of trespass was well brought against the owner of the cattle, for an injury committed while in the custody of the agister. If liable at all, he was only so in case, and of this the justice had no jurisdiction. This view of the case renders unnecessary the consideration of the other assignments of error.

Judgment reversed, and a *venire de novo* awarded.

In the Supreme Court of the United States—September Term, 1858.

SAMUEL PEARCE, PLAINTIFF IN ERROR, vs. THE MADISON AND INDIANAPOLIS RAILROAD CO. AND THE PERU AND INDIANAPOLIS RAILROAD CO.¹

1. A corporation can make no valid contract except in the course of its business and within the scope of its charter, and any departure from that business is an excess of authority in its officers.
2. Two railroad corporations before the date of the notes on which this action was brought were consolidated by special agreement, but without authority of law, and acted under a common board of management and thus carried on the business of both roads, and while so acting purchased a steamboat, for which the notes were given. They afterwards dissolved their joint business relations, and each road conducted its own affairs; while united the notes sued on were given. Held, first, that persons dealing with the defendants must take notice of the limitations imposed upon their authority by the act of incorporation, and second, that these notes not having been given by authority of law, no recovery could be had on them.

In error to the Circuit Court of the United States for the District of Indiana.

¹ We are indebted to our excellent cotemporary, *The Cincinnati Weekly Law Gazette*, for this opinion.

The opinion of the Court in which the facts appear, was delivered by

CAMPBELL, J.—The defendants are separate corporations, existing under the laws of Indiana, and were created to construct distinct lines of railroad that connect at Indianapolis, in that State. The plaintiff is the assignee of five promissory notes, that were executed under conditions set forth in the declaration, and of which he had notice. The two corporations (defendants,) some time before the dates of the notes, were consolidated by agreement, and assumed the name of the Madison, Indianapolis and Peru Railroad Company, and under that name, and under a common board of management, conducted the business of both lines of road.

While the business of the two corporations was thus directed and managed, the President of the consolidated company gave these notes in its name in payment for a steamboat, which was to be employed on the Ohio river, to run in connection with the railroads. After the execution of the notes and the acquisition of the boat, this relation between the corporations was dissolved by due course of law, and at the commencement of the suit each corporation was managing its own affairs. The plaintiff claims that the two corporations are jointly bound for the payment of the notes; but the Circuit Court sustained a demurrer to the declaration.

The rights, duties and obligations of the defendants are defined in the acts of the Legislature of Indiana, under which they were organized, and reference must be had to these to ascertain the validity of their contracts. They empower the defendants respectively to do all that was necessary to construct and put in operation a railroad between the cities which are named in the acts of incorporation. There was no authority of law to consolidate these corporations, and to place both under the same management, or to subject the capital of the one to answer for the liabilities of the other; and so the courts of Indiana have determined. But in addition to that act of illegality, the managers of these corporations established a steamboat line, to run in connection with the railroads, and thereby diverted their capital from the objects contemplated by their charters, and exposed it to perils, for which they afforded no sanc-

tion. Now, persons dealing with the managers of a corporation, must take notice of the limitations imposed upon their authority by the act of incorporation. Their powers are conceded, in consideration of the advantage the public is to receive from their discreet and intelligent employment, and the public have an interest that neither the managers nor stockholders of the corporation shall transcend their authority. In *McGregor vs. The Official Manager of the Deal and Dover Railway Co.*, (16 L. and Eq. 180,) it was considered that a railway company, incorporated by act of Parliament, was bound to apply all the funds of the company for the purposes directed and provided for by the act, and for no other purpose whatever, and that a contract to do something beyond these was a contract to do an illegal act, the illegality of which appearing by the provisions of a public act of Parliament, must be taken to be known to the whole world. In *Coleman vs. The Eastern Counties Railway Co.*, 10 Beav., 1, Lord Langdale, at the suit of a shareholder, restrained the corporation from using its funds to establish a steam communication between the terminus of the road (Harwich) and the northern ports of Europe. The directors of the company vindicated the appropriation as beneficial to the company, and that similar arrangements were not unusual among the railway companies. Lord Langdale said: "Ample powers are given for the purpose of constructing and maintaining the railway, and for doing all those things required for its proper use when made. But I apprehend that it has nowhere been stated that a railway company as such, has power to enter into all sorts of other transactions. Indeed it has been very properly admitted that railway companies have no right to enter into new trades or business not pointed out by the acts. But it has been contended that they have a right to pledge, without limit, the funds of the company for the encouragement of other transactions, however various and extensive, provided that the object of that liability is to increase the traffic upon the railway, and thereby to increase the profit to the shareholders.

"There is, however, no authority for anything of that kind. It has been stated that these things, to a small extent, have been frequently done since the establishment of railways; but unless the

acts so done can be proved to be in conformity with the powers given by the special acts of Parliament under which those acts are done, they furnish no authority whatever. In *The East Anglian Railway Co. vs. The Eastern Counties Railway Co.*, 11 C. B., 803, the court say, the statute incorporating the defendants' company gives no authority respecting the bills in Parliament promoted by the plaintiffs, and we are therefore bound to say that any contract relating to such bills is not justified by the act of Parliament, is not within the scope of the authority of the company as a corporation, and is therefore void."

We have selected these cases to illustrate the principle upon which the decision of this case has been made. It is not a new principle in the jurisprudence of this court. It was declared in the early case of *Head vs. Providence Insurance Co.*, 2 Cranch, 127, and has been re-affirmed in a number of others that followed it. *Bank of Augusta vs. Earle*, 13 Pet., 519; *Perrine vs. Ches. and Ohio Railroad Co.*, 9 How., 172.

It is contended that because the steamboat was delivered to the defendants and has been converted to their use, they are responsible. It is enough to say in reply to this that the plaintiff was not the owner of the boat, nor does he claim under an assignment of the owner's interest. His suit is instituted on the notes, as an endorsee, and the only question is, had the corporation the capacity to make the contract, in the fulfilment of which they were executed? The opinion of the court is, that it was a departure from the business of the corporation, and that their officers exceeded their authority.

Judgment affirmed.